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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 12th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 8 August 2001, at 10 a.m.

Chairman: Mr. WEISSBRODT

later: Mr. OGURTSOV

CONTENTS

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued)

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The meeting was called to order at 10.05 a.m.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 4) (continued) (E/CN.4/Sub.2/2001/10, 11 and Add.1, 12 and Add.1, 13, 14 and 33; E/CN.4/Sub.2/2001/NGO/3, 11 and 17-22; E/CN.4/Sub.2/2001/CRP.1; E/CN.4/Sub.2/2001/WG.2/WP.1 and Add.1-3; E/CN.4/2001/51-53, 54 and Add.1 and Corr.1, 62/Add.2 and 148; E/CN.4/Sub.2/2000/12 and 13)

1. Mr. PAEK (International Association of Democratic Lawyers) said he wished to draw the Sub-Commission's attention to the infringement by the Japanese Government of the human rights of children attending Korean schools in Japan. There were 117 foreign schools in Japan, with some 26,000 pupils of different ethnic origins, the majority of whom were Korean. The Government discriminated against those pupils by denying them the advantages that Japanese pupils enjoyed, in explicit contravention of the right of ethnic minorities to preserve their own culture.

2. Over the years, the Government of Japan had received numerous communications on the subject from United Nations human rights bodies expressing concern that Korean studies were discouraged and that children of Korean origin suffered discrimination in access to higher education. Although over 50 per cent of other universities in Japan accepted students from Korean schools, State-run universities refused to accept them without a preliminary entrance test. Korean residents in Japan paid the same taxes as Japanese nationals but the Government subsidy to Korean ethnic schools was only one tenth of that given to Japanese schools.

3. He urged the Sub-Commission to request the Japanese Government to take prompt measures to end its discriminatory treatment of Korean schools, in accordance with the relevant recommendations of the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination.

4. Ms. BOWDEN (Liberation), speaking also on behalf of the Asian Buddhist Conference for Peace, said the issue of how to make transnational corporations fully accountable for their operations concerned the entire international community. In view of the accelerated growth of transnational power in the course of the globalization process of recent years, it was imperative to establish a mechanism to ensure that human rights were protected in countries where such corporations operated, and particularly in developing countries. The rights of the citizen were frequently overridden by the economic interests of the transnationals, often with the complicity of Governments and international organizations such as the World Trade Organization (WTO) and the World Bank.

5. The situation in the province of Sindh in Pakistan also gave cause for concern. In view of the fact that, in rural Sindh, the literacy rate was 23 per cent, that fewer than 5 per cent of the people had access to safe drinking water, and that the infant and maternal mortality rate was alarmingly high, it was ironic that the Government of Pakistan was prepared to spend far more on military cantonments in the area than on education and health. Although Sindh was the richest province in Pakistan and provided more than 60 per cent of the national gross domestic product (GDP), its people remained marginalized within their own country.

6. Another cause for concern was the discriminatory policy practised by the Japanese Government towards naturalized Koreans living in Japan, and notably their exclusion from the national pensions scheme. She also wished to highlight the plight of the people of Iraq and Cuba, who continued to be victims of economic sanctions imposed by the United States, and called for those sanctions to be lifted.

7. Lastly, her organization was deeply disturbed by the conflict in the Indian State of Assam, and supported the call by the people of that State for a political solution that would guarantee their fundamental right to enjoyment of their own natural resources.

8. Ms. YASSINI (International Alliance of Women) said she wished to draw attention to the situation of Saharan children separated from their parents and forcibly deported by the Frente POLISARIO. Such children were subjected to political indoctrination and given intensive military training from the age of 14, with further training in countries of eastern Europe and central America. That tragic situation was contrary to all the principles of United Nations human rights conventions, and also ran counter to the United Nations Settlement Plan for the Western Sahara, which stipulated the return of those held in the camps to their homeland under the auspices of the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC).

9. She called on the international community to ensure that the United Nations standards protecting family unity and prohibiting the recruitment of children into the armed forces were respected.

10. Mr. GHULAM QADIR (World Muslim Congress) said that globalization, driven by rapidly advancing technology, had become one of the most emotive issues of the day. While it had brought increased wealth and higher living standards to some, its benefits had largely bypassed more than three quarters of the world's population. The street battles which had taken place in Seattle and more recently in Genoa reflected the growing discontent of ordinary people with the inhuman face of globalization.

11. The developed countries and international financial institutions needed to find ways of promoting inclusive globalization. The preliminary report prepared by the Special Rapporteurs Mr. Oloka-Onyango and Ms. Udagama (E/CN.4/Sub.2/2000/13) had been the first attempt to analyse the impact of globalization on the full enjoyment of human rights. He was somewhat disappointed that it would not be possible to discuss the progress report by the two Special Rapporteurs (E/CN.4/Sub.2/2001/10) at the current session of the Sub-Commission.

12. Although the Vienna Declaration proclaimed that the right to development was an inalienable human right, the international community had yet to define how best to promote the realization of that right. The Sub-Commission had an important contribution to make in that regard, notably in relation to the situation of minorities, women, indigenous peoples, and peoples in areas of conflict or occupied territories. He suggested that it should undertake a study on the subject, and transmit its findings to the Working Group on the Right to Development.

13. Mr. GHULAM MUHAMMAD (International Islamic Federation of Student Organizations) said that one fifth of the human race lived in the south Asian countries of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The living conditions of many people in those countries were poor in the extreme and it was difficult to see how Governments could justify increases in expenditure on weapons and missiles while so many millions lacked even the basic necessities, such as food, clothing, shelter, education and medical care.

14. Unfortunately, the hostilities between India and Pakistan had rendered the South Asian Association of Regional Cooperation almost entirely ineffective and, although the question of how to eliminate obstacles to development in the region had been debated at length in many forums, peace and the elimination of poverty would remain a distant dream unless the Kashmir dispute was resolved. He hoped that the Working Group on the Right to Development would help to find a solution to the problem.

15. He congratulated the High Commissioner for Human Rights on her report on the impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) on human rights (E/CN.4/Sub.2/2001/13), and supported the recommendation that the study be continued.

16. Mr. LEBLANC (Franciscans International) said that experience had shown that economic sanctions hit innocent people the hardest, while having the least impact on the military and the country's rulers. In addition, they inflicted suffering without any reasonable prospect of accomplishing the aims set for them, namely, the enforcement of international law. The international community thus needed to examine alternatives to comprehensive trade sanctions. The imposition of such sanctions needed to be governed by an explicit regime, which would take into account both human rights and humanitarian concerns. Political, economical or strategic considerations ought not to take precedence over the fundamental interests of a people as a whole.

17. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that globalization had revealed the lack of accountability of transnational corporations, and had stimulated a debate on how such corporations could be induced to accept international codes of conduct. While the development of such codes was crucial, it was also important that independent monitoring of the conduct of transnationals be carried out by trade unions, non-governmental organizations (NGOs) and international agencies.

18. The process of globalization had led to a gradual loss of control by States over the management of their economies and natural resources. In many countries, the influence of the transnationals, the International Monetary Fund (IMF) and the World Bank, and neo-liberal policies of structural adjustment, were preventing the people from disposing freely of their wealth and natural resources. The effect of such policies was not only to increase the gap between rich and poor but also to exacerbate social tensions and conflicts, to which the authorities responded with increasing frequency by actions violating civil and political rights.

19. She pointed out that the two International Covenants on Human Rights made it clear in their common article 1 that the right of self-determination was a right that should be enjoyed by all peoples, and not only by certain categories of persons, groups or territories. Although the

Sub-Commission had touched on the subject of the right to self-determination in the past, it had not looked into the issue of how it was being affected by recent developments. She therefore suggested that it should undertake a study of the impact of globalization, neo-liberal policies and structural adjustment on the right of peoples to self-determination.

20. Mr. KIM (Pax Romana) said that his organization welcomed the excellent report by the Special Rapporteurs on globalization and its impact on the full enjoyment of human rights (E/CN.4/Sub.2/2001/10), as well as the statement by Mr. Guissé on the need for a further study on the right to drinking water. The report raised the significant issue of the right to popular participation in the globalization process. Most of the protestors in Genoa for the recent meeting of the Group of Eight (G-8) were concerned at the impact of globalization on the right to education, the right to food and the right to work. Their only means of expressing such concerns was to protest in the street.

21. Most of the multilateral institutions leading the process of globalization, such as the IMF, World Bank, WTO and G-8, had no mechanism to provide for the participation of civil society. Their response to increasingly vociferous protests was to meet in ever more inaccessible places. He urged those institutions to establish a substantive mechanism for dialogue with civil society such as an arrangement for granting consultative status to NGOs. He also called on the Sub-Commission to discuss the right to popular participation in the globalization process within the framework of its Social Forum.

22. Ms. MARCEAU (World Trade Organization) said, in response to the report on globalization by the two Special Rapporteurs (E/CN.4/Sub.2/2001/10), that WTO staff members were specifically prohibited from becoming panellists in the framework of the dispute settlement system (para. 40). While it was true that the mechanism was costly in terms of time and money spent on lawyers, access to it was free for all WTO members. The Advisory Centre on WTO Law had been established with a view to helping developing countries to make use of the dispute settlement procedure. There were often panellists from developing countries, and always at least one whenever one of the parties to a dispute was itself a developing country. It had been inaccurately inferred that there was no possibility of dissenting opinions among panellists. Although opinions remained confidential, dissenting voices had been heard in dispute settlement panels and in the Appellate Body.

23. Unlike all other intergovernmental tribunals, WTO panels did accept amicus curiae briefs, although they were not provided for in the WTO Agreements. It was true that developing countries initiated only about one third of the disputes but that was to be explained by the relatively limited participation of those countries in world trade. There were many other disputes in which developing countries participated as third parties.

24. She welcomed the input from the Special Rapporteurs, given that there was clearly room for improvement to the dispute settlement mechanism. Nevertheless, she drew attention to the fact that the mechanism had been designed to put an end to unilateral actions in trade-related matters. No other international mechanism offered such a restriction on the capacity of powerful States to dictate the rules of the game to weaker ones. The WTO secretariat, as a distinct legal personality, and the WTO member States, were bound by international law, and were consequently under an obligation to respect human rights instruments. Furthermore, the

WTO Agreements specifically mentioned that members should interpret all the provisions of those Agreements in the light of any relevant rules of international law. The mandate of WTO dispute settlement panels was limited to deciding whether or not a violation of the WTO Agreements had occurred. They were unable to change the rules agreed upon by the member States.

25. Ms. WATAL (World Trade Organization) said that the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) attempted to strike a balance between the long-term social objective of providing incentives for future inventions and the short-term objective of allowing the use of existing inventions. The explicit objectives of the Agreement, as set out in article 7, were that "the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations".

26. They thus corresponded exactly to the objectives established in article 15 of the International Covenant on Economic, Social and Cultural Rights, concerning the right of everyone to enjoy the benefits of scientific progress and its applications, and an author's right to the protection of the interests resulting from his or her work. The Agreement gave considerable scope for member States to adopt its provisions in accordance with their own legal systems and practices. Opinions differed, however, as to whether the right balance had been struck, and the input of the two Special Rapporteurs was a welcome contribution.

27. The TRIPS Council was currently discussing the possibility of extending the coverage of TRIPS to the protection of traditional knowledge and ensuring access to medicines. Several delegations in the Council had already expressed their views, for instance on the relationship between the TRIPS Agreement and the Convention on Biological Diversity. Since June 2001, WTO members had been engaged in a constructive discussion on ways to ensure that the TRIPS Agreement helped to resolve rather than to exacerbate the public health problems of poor countries. A further full day would be set aside for that debate in the next meeting of the Council.

28. In a recent workshop organized jointly with the World Health Organization (WHO), the WTO secretariat had also explored the issue of differential pricing and the financing of essential medicines, which would entail lower prices for those medicines in the poorer countries.

29. Mr. TAPLIN (International Monetary Fund (IMF)) said that the IMF was an intergovernmental organization that currently had 183 member States. Its policies were guided by the Articles of Agreement, and its highest decision-making body was the Board of Governors, which met once a year. Day-to-day activities were overseen by the Executive Boards, comprising 24 Executive Directors from the member States. Together with two ministerial oversight bodies, they ensured that the member States had the ultimate say in determining what the Fund did.

30. Members had recently endorsed the Managing Director's vision for changing the emphasis of the work of the IMF, which included the following elements: striving to promote

sustained, non-inflationary, economic growth to benefit all the people of the world; becoming the centre of competence for the stability of the international financial system; working in a complementary fashion with other institutions to safeguard public goods; becoming more transparent, and adapting continuously to changing circumstances.

31. Welcoming the contribution of the Special Rapporteurs, he said that the discussion on the link between international economic law and human rights law was particularly interesting. It was correctly pointed out in the progress report (E/CN.4/Sub.2/2001/10) that the Fund had recently put greater emphasis on poverty reduction, and the genuine significance of that shift had been widely recognized, for instance by the African Heads of State meeting in January 2000. The Special Rapporteurs had, however, ignored one of the most basic tenets of the New Poverty Agenda, namely good macroeconomic management. Little, if anything, could be achieved in the attack on poverty, or in the realization of the full enjoyment of human rights, in the context of basic macroeconomic imbalances.

32. The Special Rapporteurs had raised the issue of conditionality and country ownership. He drew attention to the fact that the Poverty Reduction Strategy Papers (PRSPs) were fully government-owned. IMF and the World Bank had the final say, however, on whether to support those Papers through financing. With regard to the assertion that the Fund employed a "thinly disguised conditionality", there had never been any intention to provide financial support on an unconditional basis. IMF was required by its Articles of Agreement to focus on the financial and macroeconomic dimensions of a country's policies. The Fund was fully accountable to its member States, not to civil society. Its financial activities were externally audited, it issued an annual report and it maintained an easily accessible Web site.

33. The Special Rapporteurs seemed also to have misunderstood the discussion on debt sustainability undertaken by the Executive Boards of the Fund and the Bank. The Boards had pointed out that the realization of sustainable debt levels might be put at risk by the problem of HIV/AIDS, as well as by other factors such as adequate availability of Official Development Assistance (ODA), private capital inflows, and internal economic management. He hoped that many more countries would soon be able to benefit from the Highly Indebted Poor Countries (HIPC) Initiative, once they had emerged from situations of internal conflict.

34. Strictly speaking, IMF did not have a mandate to promote human rights, and was not bound by international human rights instruments. Its autonomy from the United Nations had been established in 1947. Nevertheless, in his view, the Fund did effectively promote human rights through a variety of channels. The emphasis on poverty reduction and higher spending on education and health, the preparation of PRSPs in a broad participatory process with the active involvement of civil society, the enhancement of governance through all possible channels, and the push for a reduced role of the State in economic activity, were all critical areas for the empowerment of civil society and preconditions for the enjoyment of human rights.

35. Mr. YIMER expressed his surprise at the statement by the representative of the IMF that the Fund was not bound by international human rights conventions. Congratulating the Special Rapporteurs on their contribution to the debate on globalization, he drew attention to paragraphs 6 to 13 of their report, which set out the conceptual framework to the discussion. He shared the views expressed in chapter II that international economic law had largely ignored

human rights issues, and that some countries had not benefited from the new developments in the global economy. It should be emphasized, as stated in paragraph 29, that the TRIPS Agreement seemed to give priority to cost recovery and to the protection of innovation, to the detriment of the right to life and the right to health.

36. He agreed that the principle of conditionality with regard to human rights was extremely problematic, and the comments made by the Special Rapporteurs in paragraph 62 should be given particular consideration in that regard. He further emphasized that there had to be a serious attempt at examining why there was such vocal, and sometimes violent, opposition to multilateral institutions and that globalization affected economic, social and cultural rights as much as it did civil and political rights.

37. He drew attention to three recent articles in the International Herald Tribune which made a valuable contribution to the debate on globalization. The Nobel laureate, Mr. Amartya Sen, had written an article entitled "If It's Fair, It's Good: 10 Truths About Globalization" (14 July 2001). Among other things, Mr. Sen noted that anti-globalization protests were not about globalization, that globalization was not new, nor simply Westernization, and that globalization was not in itself a folly. What was needed was a fairer distribution of the fruits of globalization.

38. According to another columnist, although globalization was supposed to bring progress, education, prosperity and economic modernization, it also brought social and political disruption, the destruction of cultural infrastructure and ruin for internationally uncompetitive local industries and agriculture. He continued by noting that the overall balance of IMF intervention in newly globalizing economies had been politically negative, imposing norms of deregulation and popular austerity that would never be accepted in any Western industrial society.

39. A third columnist observed that the strategies advocated by the economic and financial mainstream - reduced government spending, privatization, unrestricted capital flows and completely free trade - were not those that had led to rapid growth in developing countries in the recent past. If countries such as the Republic of Korea, Thailand or Brazil had been restricted to such policies, they would not have been success stories. They had waited to grow more prosperous, however, before integrating their economies into the advanced world.

40. There was clearly a lively debate under way on the subject of globalization and the Sub-Commission should be an active participant.

41. Mr. YOKOTA, having welcomed the report on globalization and its impact on the full enjoyment of human rights as a meaty, thorough and balanced document said that one most welcome dimension of globalization was the universalization of human rights concepts and standards. In the past, there had been a tendency, stemming from Western Europe, to focus on freedoms and on civil and political rights. There had since been a shift of emphasis, with more attention being paid not only to economic, social and cultural rights but also to the right of self-determination, the right to development and the right to a peaceful life.

42. He welcomed the balanced approach adopted by the two Special Rapporteurs to the delicate relationship between, on the one hand, trade and financial regimes and, on the other,

human rights regimes. Clearly, the latter took precedence over the former since organizations such as WTO, IMF and the World Bank - the leading representatives of global trade and financial regimes - were subject to international law, which contained all human rights norms in the form either of treaties or of customary law. Furthermore, many international lawyers viewed human rights as peremptory norms (jus cogens) which could not be restricted or ignored even by agreement between States or between international organizations and States. Conditionality agreements, for example, could not be invoked to justify violations of basic human rights.

43. The Sub-Commission and other human rights bodies should therefore make it clear that global trade and financial regimes were required, just like other subjects of international law, to respect and protect human rights. That was a fundamental and non-negotiable principle. He had initially been hesitant to include such self-evident remarks in his statement but, having listened to the representative of IMF, he realized that the principles needed to be spelt out.

44. The global and financial regimes should not be pushed aside, however. Multilateral institutions could be used to promote and protect human rights, since they had the means and technical know-how to address problems such as extreme poverty, unemployment, disease, malnutrition and lack of adequate housing, food and drinking water. The Special Rapporteurs showed their awareness of that potential when they referred in paragraph 49 of the report to the visit by the heads of the World Bank and IMF to Africa to discuss investment, globalization, and the battle against poverty and HIV/AIDS. But the human rights regimes, instead of waiting for the institutions concerned to become more sensitive to human rights, should take the initiative and propose a sharing of expertise between the two regimes to their mutual benefit.

45. He would be interested in having the opinion of the Special Rapporteurs on the Global Compact initiative put forward by the Secretary-General in 1999. There seemed to be mixed feelings about that initiative among NGOs.

46. Mr. GUISSÉ, commending the Special Rapporteurs on their report, said that globalization would be acceptable if it was accompanied by respect for international standards and the exercise of economic, social and cultural rights. When the representative of IMF expressed a lack of concern with human rights in a forum dedicated to the promotion of human rights, it had struck him as downright insulting. When the representative of WTO stated that the share of the developing countries in world trade was very small, implying that they merited less attention on that account, he was expressing a sentiment that was incompatible with the principle of equal treatment of all States, regardless of their size and economic weight.

47. WTO and IMF seemed to have created their own rules, ignoring the international system of human rights protection, the welfare of civil society and domestic legislation. They were bent on making the rich countries richer, protecting their interests and leaving the poor with no hope of relieving their distress. All the rules applied by the multilateral institutions smacked of protectionism, a determination to protect the strong against the weak. But the world was changing. Civil society would no longer tolerate such behaviour and had begun to manifest its resistance in the streets.

48. Mr. BENGOA said that he broadly agreed with the substance of the report on globalization, a subject that called for ongoing and in-depth analysis by the Sub-Commission. It

had become clear in the early 1990s that the end of the cold war would have a far-reaching impact on human rights. The preceding period had been characterized by a sterile debate between, on the one hand, countries that extolled the virtues of civil and political rights as the bedrock of democracy and, on the other, those that gave primacy to the State as the guarantor - by whatever means - of such basic needs as employment, health and education. The 1993 World Conference on Human Rights, by promoting a renewed emphasis on the indivisibility of human rights, had established an appropriate framework for the new era of globalization.

49. The two Special Rapporteurs had based their definition of what was old and new in the globalization process on three components: integration of national economies on a world scale; development of communications; and reduction of barriers to world trade and the faster movement of capital. While he agreed that those elements were of key importance, he felt that certain other phenomena should be taken into account in assessing the impact of globalization on human rights.

50. Globalization was not a recent phenomenon. The process of integration of national economies had been proceeding for centuries. The industrialization of the textile industry in Manchester, for example, had had a devastating impact on manual textile production as far away as India. Communications had also been developing for a long time and barriers to capital movements had often been broken down in the past by force of arms. It was thus unclear whether globalization, in its current form, was an ongoing process or an entirely new phenomenon. If it was a new phenomenon, there would be major implications for political life, the very concept of human rights, the development of social movements and intellectual exercises such as that under way in the Sub-Commission.

51. Where had a break with the past occurred? In his view, the breakdown of local communities was one such case. By virtue of instant communication, the outside world impinged on people's private lives, destroying local cultures and loosening the bonds between individuals and communities, so that they were left to fend for themselves and had to reinvent their identity. The rage expressed in the streets of Montreal and Genoa, which would continue to be expressed elsewhere, was partly due to that phenomenon. Globalization aroused unease not only among young people in developed countries but also among those in third world countries who could obtain no credible or reasonable explanation for being condemned to live a life of poverty. Under those circumstances, they might well turn their backs on the local community and migrate to a developed country or even take up arms on behalf of a cause that appealed to them.

52. The breakdown of the nation State provided another clue to the protest movement. The weakening of State responsibility had led to a crisis in traditional political life and made citizens increasingly vulnerable, especially in the most disadvantaged countries of the third world.

53. A third important characteristic of globalization had been the disintegration of the multipolar world and the emergence of the United States in the 1990s as the predominant Power in the world economy and in international affairs. Moreover, globalization in economic terms seemed to stop short where the interests of the United States and, to some extent, Europe were at

stake. The developed countries were all too prepared to resort to protectionism to safeguard their agricultural interests. It was therefore essential to discuss the issue of "globalized world power" and the fact that globalization was based on inequality.

54. He urged the Special Rapporteurs to continue their research. In that connection, he agreed with the representative of Pax Romana that the right to popular participation in the globalization process was an important subject for further study.

55. Mr. EIDE drew a distinction between the universalization of human rights and economic globalization. Universalization of human rights was a process of encouraging States to respect and protect human rights. Economic globalization was a process of developing a global market through the interaction of different power structures.

56. The WTO statement was interesting and useful in the sense that the Organization was open to dialogue. It had conceded that, as an intergovernmental organization, it was bound by human rights law. On the other hand no dialogue seemed possible with the IMF. However, he trusted that its attitude would change in the long run because the States members of IMF were bound by international human rights law and its mandate had to be interpreted in the light of the peremptory rights of international law.

57. The liberalization of trade, including the trade in services, was directly related to the enjoyment of economic, social and cultural rights and therefore required close scrutiny by the Sub-Commission. States members of the WTO were required under international law to provide affordable and accessible services to everyone within their jurisdiction in areas such as health, education, safe water and sanitation. There was a serious risk that privatized international services would adopt "cost-effective" approaches that neglected the most vulnerable, since they were not subject to the same democratic control as State services and lacked a sense of social responsibility to local communities.

58. The Sub-Commission should request the High Commissioner for Human Rights to undertake an analysis of the human rights impact of the General Agreement on Trade in Services (GATS) and the nature of State obligations under the Agreement, focusing on the possible impact on Governments' ability to meet their basic obligations to protect economic, social and cultural rights. Moreover, the members of WTO, meeting in Qatar later in the year, should be urged to make a thorough assessment of the impact of GATS on the ability and commitment of States to provide the services mandated under international human rights law.

59. Resolution 2000/7 on intellectual property rights and human rights adopted by the Sub-Commission at its previous session had had reverberations far beyond what had been expected at the time. The scope of intellectual property as a human right was not necessarily congruent with its scope in national legislation. It was therefore important to determine its scope under human rights law, for example in terms of the right to benefit from progress in science and technology and the right to food, health and education. The Committee on Economic, Social and Cultural Rights was currently preparing a general comment on the subject.

60. Any follow-up resolution to resolution 2000/7 should call on Governments to integrate provisions into their national and local legislation and policies that protected the social function of intellectual property; request the High Commissioner for Human Rights to seek observer status with WTO for the ongoing review of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); ask her to analyse the impact of the TRIPS agreement on the rights of indigenous peoples; call on the Commission's Special Rapporteurs on the right to food, on the right to education, and on adequate housing as a component of the right to an adequate standard of living to include in their reports a review of the implication of the TRIPS Agreement on the realization of the rights falling within their mandates; and urge the Commission on Human Rights to request the High Commissioner to convene an expert seminar to consider the human rights dimension of the TRIPS Agreement.

61. Mr. Ogurtsov, Vice-Chairperson, took the Chair.

62. Mr. PINHEIRO proposed that copies of the summary record of the meeting and the IMF statement should be transmitted to the Commission on Human Rights and to the United Nations High Commissioner for Human Rights in order to start a genuine dialogue between the United Nations human rights system and that institution.

63. Ms. MOTOC, said that the report by the Special Rapporteurs gave a very balanced view of the different positions of international trade law and human rights law. The title was not representative of the contents, however, since, owing to limitations of time, the report had been able to look at international institutions only. The Sub-Commission should consider how work could be carried out on other elements of globalization, such as the consequences of globalization for women.

64. The international financial institutions were facing a serious crisis of legitimacy; perhaps the time had come to examine how human rights organizations could help them overcome that situation by placing the relations between the organizations of civil society and those institutions on a more participatory basis.

65. The important question had been raised of whether such organizations were subject to human rights law and whether they were ready to accept the indivisibility of human rights, particularly economic, social and cultural rights and, establish the relevant policies. As for the measures that the Sub-Commission could adopt, she supported the recommendations made by her colleagues, in particular, with regard to the TRIPS Agreement. It had been reported that many States had signed that Agreement without fully realizing its consequences.

66. It was important that the Sub-Commission should make recommendations to the Bretton Woods institutions and the WTO; it should inform them that a human rights framework already existed and that they should respect it. In the context of the economic integration of the European Union, the European Court of Justice had on several occasions pointed out that there were human rights principles that needed to be regulated; moreover, it had the power to put the human rights framework into place and interpret it.

67. Another issue was to determine how to increase the participation of civil society; perhaps it would be possible to recommend the establishment of economic and social committees with representatives of civil society within those institutions in order to ensure that there was a permanent dialogue with civil society. The figure of *amicus curiae* could be considered in the conflict resolution mechanism.

68. The political role and the interests of international civil society and NGOs should also be examined to determine the reasons for their opposition to globalization, what they wanted and what they had achieved.

69. Mr. van HOOF said he endorsed the comments made by Mr. Eide and Mr. Yokota. They had recommended that the Sub-Commission should commence a constructive dialogue with the other players; that required understanding their position and speaking the same language. The Sub-Commission should be aware that it needed to explain its own position very carefully, understand the other side's point of view, and be prepared to rebut its arguments. In that connection, he drew attention to a very well-argued paper prepared by François Gianviti, the General Counsel of IMF. While he agreed concerning the primacy of international human rights law, he thought that that should be argued in terms of the provisions of the Vienna Convention on the Law of Treaties and could make an important contribution to the follow-up to the work of the Special Rapporteurs.

70. Lastly, the Sub-Commission might contribute to a constructive dialogue by defining the various obligations in connection with each right, differentiated according to the organization involved.

71. Mr. SIK YUEN said that, in order to realize the benefits of globalization, it was urgent to pay less attention to the market-oriented aspects of the process and to place greater emphasis on human development, by examining the effect of globalization and structural adjustment on the individual. All countries wanted to accelerate their development and privatization could certainly make a contribution, but perhaps the price was too high. He shared the view of the primacy of human rights; all institutions should act within the framework of the promotion, respect and fulfillment of human rights.

72. Mr. GOMEZ-ROBLEDO VERDUZCO said he was in full agreement with the vision of globalization as a political phenomenon, but it was necessary to consider who benefited from it and who suffered from it. The developing world had yet to see the benefits of globalization.

73. One of the problems was deciding how to engage the international responsibility of the World Bank, the IMF and the WTO; that would require the existence of a subject of international law and the international financial institutions did not have any *locus standi* so far. The intention was to be able to engage their international responsibility for the possible violation of fundamental human rights, but that could be done only in a way that was strictly legal. A framework agreement among States was a possibility, achieved by the systematic pressure of international opinion, which was a powerful weapon.

74. Mrs. DAES said that, while chapter II, section A, of the report (E/CN.4/Sub.2/2001/10) discussed globalization and the question of intellectual property rights, the question of the

intellectual property of indigenous people had not yet been examined. The two Special Rapporteurs should consider that issue in their next report. In many ways, indigenous people constituted a challenge to the fundamental assumptions of globalization. They did not accept that humankind would benefit from the construction of a world culture of consumerism, since they were aware that consumer societies grew and prospered at the expenses of other peoples and of the environment. Indeed, most indigenous people considered that the term sustainable development referred to the illusory goal of continuous growth of human consumption. It should be recalled that the United Nations Conference on Environment and Development (UNCED) had been unable to reach agreement on any significant transfer of wealth from the North to the South, because that would have required higher prices and a reduction in the level of consumption in the North.

75. In the Andes and South-East Asia, where most of the world's indigenous peoples lived, flows of private foreign investments had increased by as much as 10,000 per cent, but that growth had been at the expense of many important and highly diverse ecosystems and the indigenous people who lived in them, as a result of commercial activities, such as mining and logging. The international community appeared to have learned nothing from the human and ecological tragedies caused by the misguided development policies of the 1960s and 1970s. Large-scale projects had not only displaced millions of people, levelled rainforests, emptied rivers and eliminated much of the world's biological diversity, they had also set ethnic and social conflicts in motion that would haunt the world for generations to come.

76. The very existence of the world indigenous movement was a product of globalization, and, in particular, of information technology, which had helped link indigenous peoples worldwide, increase their visibility and broadcast their collective voices.

77. The members of the Sub-Commission, as international experts, shared the responsibility for managing the next stage of globalization and should continue to insist that the rules of the international market place must not only be procedurally neutral but also substantively fair.

78. The globalization of trade and communications presented opportunities as well as challenges for indigenous peoples. In terms of its impact on their cultures and their intellectual property, it was creating two potentially opposing forces: the global marketing of goods and the global marketing of ideas. Indigenous peoples were rich in ideas. However, although globalization was creating a world market for the dissemination of fresh ideas and new voices, it was also making it easier for one voice to drown out all the others. While opening up access to the whole range of human cultural diversity, it was dissolving all cultures in a melting pot. However, by making it possible for even the smallest society to sell its ideas rather than its raw materials, it was also threatening the confidentiality of the most private and sacred knowledge of indigenous peoples.

79. The Convention on Biological Diversity had been a crucial step for the protection of intellectual property; it had recognized the need to respect, preserve and maintain the ecological knowledge of indigenous peoples and local communities and to ensure that the benefits of commercial applications were shared equitably. An initiative to create a new category of intellectual property, being developed under the auspices of the States parties to the Convention

on Biological Diversity and also by the United Nations Food and Agriculture Organization, in connection with the revision of the International Undertaking on Plant Genetic Resources, was gaining support in the international community.

80. In conclusion, she fully supported the recommendations of the Special Rapporteurs and also the concrete proposals made by Mr. Eide regarding the follow-up to the report. It was imperative that the Sub-Commission should consider further measures to ensure that the United Nations human rights system was strengthened so that it could address the complex challenges ahead.

81. Lastly, she proposed that the final version of the report on globalization and its impact on the full enjoyment of human rights should include references to the Sub-Commission's work in that area and also to various aspects relating to indigenous peoples.

The meeting rose at 1.15 p.m.